

REMARKS

The present Amendment is filed in response to the Office Action dated August 2, 2010 ("the Action"). Claims 1 and 62 are amended. Claims 63 and 64 are newly presented. Claims 7, 9, and 21-34 remain canceled and claims 51-61 remain withdrawn. Therefore, claims 1-6, 8, 10-20, and 35-64 are pending in the present application. No new matter is presented by way of the present amendments or newly added claims. Because of the finality of the Action, and because of certain indications made by the Examiner (discussed below), the present Amendment is being submitted along with a Request for Continued Examination ("RCE"). Applicants' remarks relating to the pending claims and the outstanding Action are set forth below.

As an initial matter, Applicants respectfully thank the Examiner for conducting a telephone interview with Applicants' undersigned attorney on December 14, 2010. Prior to the interview, the Examiner was provided with a proposed amendment to independent claim 1, as evidenced in the Interview Summary dated December 16, 2010. During the interview, the Examiner suggested that making such amendment to claim 1 would appear to overcome all rejections to same set forth in the Action. A similar amendment is presented herein to independent claim 62. Claim 35 was also discussed and the Examiner agreed that such claim appears to be distinguished over the cited references without the present amendment to independent claim 1, from which claim 35 depends. Applicants set forth below a brief discussion relating to the rejections.

In the Action, the Examiner rejected claims 1-6, 8, 10-14, 17, 18, 35-47, and 62 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,904,697 to Gifford, III *et al.* ("*Gifford*"), claims 19-20 under 35 U.S.C. § 103(a) as being obvious over *Gifford* in view of U.S. Patent No. 6,273,912 to

Scholz et al. ("*Scholz*"), and claims 48-50 under 35 U.S.C. § 103(a) as being obvious over *Gifford*.

Independent claims 1 and 62 are herein amended to recite that the proximal portion of the body is configured to be delivered into the body tissue conduit through the aperture. Support for such amendment is found at least in paragraph [0120] and FIGS. 7, 28-30, and 33 of the present application. Figure 33, in particular, shows members 120, 122 of proximal cells 112 of the body 100 configured to be delivered into body tissue conduit 1000 through aperture 1002.

On the other hand, *Gifford* teaches an anchor member 208 having legs 214 that are configured to contact and penetrate the outside wall of the target vessel about the aperture by piercing through the tissue. Legs 214 are then deformed inwardly within the tissue wall. (See *Gifford* col.18 l.62-col.19 l.35, col.25 ll.14-42, and FIGS. 5A, 5B, 5C, and 17A-D.) *Gifford* does not disclose an assembly as claimed in either of claims 1 or 62 for at least the reason that anchor member 208 is not configured to be delivered into a tissue conduit through an aperture. If anchor member 208 were delivered through an aperture in a conduit, subsequent deformation of legs 214 would not allow anchor member 208 to grasp the tissue of the conduit about the aperture. Accordingly, Applicants respectfully submit that claims 1 and 62 are distinguished over *Gifford*.

Dependent claim 35 was discussed during the interview, and the Examiner agreed that claim 35 appears to be distinguished over the cited references without the present amendment to independent claim 1. Although claim 35 is not presented herein in independent form to specifically exclude the present amendment to claim 1, it is noted that the recitations of claim 35 are not taught by the cited references. Specifically, claim 35 recites that the delivery tool has a

first configuration adapted to deform the proximal portion of the connector assembly from the second configuration (expanded) to the first configuration (contracted). With reference to the configurations of the anchor member 208 of *Gifford* indicated by the Examiner in the Action, the anchor member 208 can only be deformed by the tool from its contracted configuration (FIG. 17A) to its expanded configuration (FIG. 17D). *Gifford* therefore does not disclose each and every limitation set forth in claim 35.

During the interview, the Examiner brought to the attention of Applicants' attorney the embodiment disclosed in FIGS. 46A-D of *Gifford*, though she indicated that such an embodiment does not appear to provide a basis for rejecting the present claims. To be clear, FIGS. 46A-D disclose a device 600 having staple members 603 that are advanced from one end of device 600 to the other. Device 600 therefore does not include at least the "axially spaced distal and proximal portions" having the features recited in independent claims 1 and 62. Accordingly, the rejection over *Gifford* set forth in the Action does not rely on the embodiment disclosed in FIGS. 46A-D of *Gifford*, and Applicants respectfully submit that any such rejection would be improper.

Given that claims 2-6, 8, 10-20, 35-50, 63, and 64 properly depend from one of independent claims 1 and 62, such claims are also believed to be allowable. Nevertheless, it is also noted that such claims are believed to include additional patentable subject matter beyond that found solely in independent claim 1. With respect to claims 19-20, *Scholz* does not overcome the deficiencies of *Gifford* noted above. Applicants note that the Examiner has indicated that the subject matter of claims 15 and 16 is allowable, although Applicants respectfully submit that such claims are also allowable based on their respective dependencies from independent claim 1 and are

not herein rewritten in independent form. Accordingly, Applicants respectfully request allowance of claims 2-6, 8, 10-20, and 35-50, 63, and 64.

In addition, Applicants note that withdrawn claims 51-61 also properly depend from independent claim 1 and are thus believed to be allowable. Nevertheless, such claims are believed to include additional patentable subject matter beyond that found solely in independent claim 1. Accordingly, Applicants respectfully request that the Examiner rejoin and allow claims 51-61.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' Attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 3, 2011

Respectfully submitted,

Electronic signature:

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